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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 716

FRED STOVER,
Petitioner,

vs.

CENTRAL BROADCASTING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

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No.....

FRED STOVER, *Plaintiff*,

vs.

CENTRAL BROADCASTING COMPANY, *Defendant*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Iowa entered in the above entitled case on the 26th day of July, 1956. Petition for rehearing was denied by the Supreme Court of Iowa by order entered on the 18th day of October, 1956. By order signed by the Honorable Tom Clark on January 10, 1957, the time for filing this Petition for Writ of Certiorari was extended to and including February 1, 1957.

OPINION BELOW

The Opinion of the Supreme Court of Iowa is not yet reported in the Iowa Reports, but is reported in Vol. 78 Northwestern 2nd 1. The order of the Iowa Supreme Court denying petition for rehearing is not reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

Introduction

Plaintiff's case below is an action for redress for libelous statements broadcast by the defendant company, falsely charging the plaintiff with being a secret Communist, and of working underground in farm organizations with agents sent out from Russia to overthrow the American system of government. This petition requests review of the ruling below which requires petitioner, in his libel action, to answer excessive number of irrelevant, vague, improper, and libelous *per se* interrogatories, which command him to list and describe *inter alia*, all copies of speeches given by the plaintiff on political and other subjects; titles of articles which plaintiff has written for publication on international and other affairs; all occasions prior to the date of the broadcast when the plaintiff has been called or referred to as a "Red", and the occasions he has denied such charges; and to detail all of plaintiff's objections to the Capitalistic system of private enterprise, and tell whether he has advocated any aims or principles of Communism or social or political views of Marx *et al* or advocacies of policy pronouncement of the Soviet Union.[1]

I.

Petitioner contends that each of the interrogatories which he is directed to answer is not relevant, not competent, nor necessary for defendant to prepare for trial. Each is improper, prejudicial, and libelous *per se*. The interrogatories seek to impute guilt by acquaintance, by association, by accusation, by interrogation, by denial, and by parallel think-

[1] The ruling requires answer to 57 interrogatories. The interrogatories with attachments are set out in full on pages 13-50 of the Record.

ing. They are vague, confusing, and burdensome; and so comprehensive they cover the field of our domestic economy and foreign relations, and are impossible to answer.

Petitioner alleges that he is denied freedom of speech and of the press contrary to the Fourteenth Amendment of the United States Constitution by requiring him to list and describe all articles written or speeches given by him on political subjects and international affairs, as a condition to prosecuting his action for a malicious libel.

Petitioner alleges that he is being deprived of his property without due process of law contrary to the Fourteenth Amendment by impossible burden imposed upon the plaintiff by the ruling below in requiring him to answer the irrelevant detailed interrogatories covering the entire life of the plaintiff for a period of 35 years, as a condition to having his day in court to recover compensation for damages suffered.

II.

Petitioner alleges that the decision of the Iowa Supreme Court is based upon an assumption contrary to the facts of record, and the express findings of fact by the trial court, that it purposely avoids passing upon the foregoing Constitutional question presented to it, and disposes of the appeal to it upon a procedural question not raised in the trial court, nor in the Iowa Supreme Court, thereby denying petitioner due process of law contrary to the 14th Amendment.

III.

The petitioner contends that the procedure followed in this case by counsel for respondent and by rulings and decision of the trial court and the Supreme Court of Iowa denies petitioner due process of law contrary to the 14th Amendment in that it places upon both court and counsel undue burden, causes unprecedented delay, nullifies the principles of the common law and undermines the foundation of our judicial system.

CONSTITUTIONAL PROVISIONS

The Constitutional provisions involved are found in Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner-plaintiff's original petition in a single count alleged that in a program entitled, "Last Man Out," broadcast by defendant over its radio station WHO on February 21, 1954, plaintiff was maliciously and falsely called and named a Communist and a member of the Communist party.

Respondent-defendant answered denying liability and filed application for permission to file 57 interrogatories, all of which was tendered with said application. During the course of the hearing before the trial court on the issue of whether respondent should be allowed to ask and petitioner be required to answer said interrogatories and on the additional issue of the propriety of each of the interrogatories tendered, petitioner filed as part of the record before the court his affidavit denying that he was a Communist, secret or otherwise, as alleged in said broadcast by Helen Wood Birnie and denying that he ever knew or ever heard of Helen Wood Birnie until time of the broadcast complained of. He asserted his belief in our form of government. Appendix IV. The trial court entered its ruling requiring petitioner to answer 57 interrogatories.

Thereafter petitioner having obtained permission from the trial court filed an amended and substituted petition in two counts, the first of which, like the original petition, alleged merely that petitioner had in said broadcast been

falsely and maliciously called and named a communist and a member of the Communist party; and the second count of which incorporated what petitioner alleged was the full script of said broadcast, thereby enlarging the scope of the alleged defamation by pleading that petitioner had been accused in said broadcast by Helen Wood Birnie of being a secret member of the Communist Party, of working underground with men sent out from Russia to overthrow the American system and bring about the Russian system of Agriculture and of secretly attempting to betray to the Communists the farm organization of which he was a leader. Record page 61-82.

Thereafter petitioner by motion requested the trial court to reconsider its ruling requiring him to answer 57 interrogatories but the trial court, after hearing, adhered to and readopted its prior ruling *in toto*.

Petitioner having obtained permission from the Supreme Court of Iowa then took an interlocutory appeal to said court which affirmed the trial court. Petition for rehearing addressed to the Iowa Supreme Court was also denied by decision entered October 18, 1956.

FEDERAL QUESTIONS RAISED IN TRIAL COURT AND IOWA SUPREME COURT

Petitioner raised the question of freedom of speech and of the press and due process of law in violation of his Constitutional rights and the 14th Amendment both in the trial court and in the Supreme Court of Iowa in connection with the competence of the interrogatories submitted by respondent.

The Federal question was raised in the Trial Court in Petitioner's Motion to Reconsider the Court's Ruling requiring Plaintiff to answer 57 interrogatories. R. 132 at 135. In oral argument on the motion petitioner argued at length the question of freedom of speech and of the press, and introduced various exhibits. Petitioner urged upon the Trial Court the case of *State of Iowa vs. William Sentner*, 230 Iowa, 590 at 603-614, 298 N. W. 813, 818, wherein it was held concerning defendant that "In expressing his views, he was

exercising the right of free speech, one of the liberties preserved to him by the due process clause of the 14th Amendment of the United States Constitution." The Iowa Supreme Court further held in said case that all reference by the county attorney to defendant's being a communist was prejudicial and reversible error.

Petitioner presented the Federal question directly to the Supreme Court of Iowa at page four of the Record filed in the Trial Court June 9, 1955, wherein were set forth Error Points "E" and "F" (both of which are identical with Errors 10 and 11 on page 11 of Brief and Argument of Appellant.)

Error Point 10 is: "Said interrogatories taken as a whole and particularly numbers 7, 21, and 28 deny to plaintiff freedom of speech and press in contravention of Article I, Section 7 of the Constitution of Iowa and Section 1 of the 14th Amendment to the Constitution of the United States." Error Point 11 is: "To compel plaintiff to answer defendant's said interrogatories is to deny him due process of law in contravention of the 14th Amendment." Citing *State v. Sentner*, 230 Iowa, 590, 298 N. W. 813.

Petitioner definitely and specifically raised the Federal question in his reply argument and in his petition for rehearing in the Iowa Supreme Court, at pages 32-35 under Brief Point 6.

REASONS FOR GRANTING THE WRIT

Petitioner believes that this case is of great public importance for this reason: it presents in a basic and comprehensive form the right of freedom of speech and of the press guaranteed to every citizen of the United States under the due process clause of the 14th Amendment to the Federal Constitution.

It presents in a striking and aggravated form the extent of the power of large broadcasting companies to destroy men and institutions unless held to a strict responsibility for the abuse of such power. The broadcast complained of was presented by the N. B. C. as one of its own programs. It was represented as a true story taken from the files of

U. S. Government agencies, whereas it was based on the statements of an Informer, one Helen Wood Birnie. This program was carried over respondent's station with national coverage.

It presents the question of the constitutionality of a system of state procedural law which as interpreted and applied by the highest court of the state, permits interrogatories not relevant to the issues, multitudinous, libelous *per se*, intrinsically prejudicial and poisonous, a number of which are so vague that there can be no common understanding as to their meaning and which, therefore, may subject the petitioner to prosecution for perjury.

The record shows that the opinion of the Iowa Supreme Court is not judicial but arbitrary and subjective and if allowed to stand and become a precedent it will undermine the integrity of the principles of the common law and our judicial system, and largely nullify the law of libel and the constitutional guarantee of freedom of speech and of the press and due process of law under the 14th Amendment.

The Iowa Supreme Court based its decision and affirmed the Ruling of the Trial Court by going outside the Record, and on its own initiative contradicted the record and stated that no objections were filed to the interrogatories as such except the written resistance filed by plaintiff to defendant's application to file in excess of 30 interrogatories.

The Trial Court in its Ruling as shown by the record, p. 110, lines 32-34, found that "The parties repeatedly argued at length the propriety of each and all of the other interrogatories" and that "in submitting this issue to the Court the parties argued each and every interrogatory. Record page 109, lines 2-7. The Trial Court further said:

"The arguments of counsel have covered a tremendously wide range. Counsel for the plaintiff has stated that in his opinion this is the most important case which has ever been brought in this court." The Trial Court said that more than twenty exhibits were offered as part of the preparation of plaintiff's argument and resistance. Record page 116, lines 17-34.

The finding of fact and ruling of the trial court that "the

parties repeatedly argued at length the propriety of each and all the interrogatories" is shown by the affirmative statement of counsel for respondent. In respondent-appellee's argument in the Iowa Supreme Court respondent there said "The hearing on the application, by agreement of counsel, was expanded to include the question of propriety of each of the interrogatories in question so that no further hearing on that question was asked or required." Appellee's Argument, pages 73, 74.

It was on that theory that the case was tried in the court below and upon that theory that the case was presented by both parties to the Iowa Supreme Court.

Under Iowa practice a case must be considered in the Supreme Court following the line of theory on which it was tried in the court below. A question not presented or considered in the trial court cannot be considered for the first time in the Supreme Court.

Conkling v. Standard Oil Co., 138 Iowa 596, 600, 116 N. W. 822, 824. *In re Sarbaugh*, 231 Iowa 320 at p. 324, 1 N. W. 2nd 105 at 107. *Green v. Jones County*, 235 Iowa 564, 16 N. W. 2nd 238. *Turner v. Zip Motors, Inc.*, 245 Iowa 1091 at p. 1101, 65 N. W. 2d 427.

The Iowa Supreme Court after recognizing that the trial court placed its ruling upon a different ground sought to justify its own excursion outside of the record by saying that "but we are committed to the rule that we must affirm the trial court if any sufficient basis appears in the record therefore, even though the ruling was placed on a different ground," and cited in support thereof certain Iowa cases involving the construction of wills and judgments.

No argument is needed to show that the cases cited by the Iowa court in upholding a decision of a trial court in construing a will have no relevance to the facts in the instant case. It shows, however, an arbitrary and labored attempt on the part of the Iowa court to justify its decision on an assumption of facts which is shown by the record to have no basis in reality.

Furthermore, the court completely ignores the fact that this is an interlocutory appeal taken under Rule 332 of Iowa

Rules of Civil procedure which is remedial in nature and should be liberally construed where the facts justify the appeal. Such appeal cannot be taken as a matter of right, but on application the Supreme Court, or any Justice thereof, may grant the appeal; but only after notice and hearing "on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice."

After application and resistance by the respondent and hearing, three of the justices of the Iowa Supreme Court, including Honorable Charles F. Wennerstrum, the then Chief Justice, found that under the facts presented, an interlocutory appeal should be granted. It was a determination after hearing that substantial rights were involved which would materially affect the final decision and that a determination of the questions before trial on the merits will better serve the interests of justice.

The decision of the Iowa Supreme Court, of July 26, 1956, is the final decision for petitioner. Unless Certiorari is granted, petitioner will be compelled to answer these interrogatories. They do not seek information concerning any matters which occurred in the year 1933 as alleged by Helen Wood Birnie in the broadcast of Febuary 21, 1954. Rather they seek to inquire into petitioner's private life and by their nature further defame petitioner. They are so vague and indefinite that men of common knowledge would be unable to agree upon what was required. They are so comprehensive as to time, place, and subject matter that they are impossible to answer. Even the attempt to answer these interrogatories would require a vast amount of time and effort and be very burdensome.

This case has occupied the attention and time of the Trial Court and the Iowa Supreme Court from the time it was commenced in March, 1954, until the present, whenever time was available to court and counsel. 511 pages of transcript and some 37 exhibits of petitioner-plaintiff and three or four exhibits for respondent furnish striking evidence of the nature and importance of the contest. Most

of this time has been devoted to the argument concerning the relevance and competence of these interrogatories, individually and collectively, and whether petitioner should have been allowed to file his amended and substituted petition and its competence.

Although the Court does not ordinarily grant Certiorari to review a non-final judgment, exceptions have been recognized. It is petitioner's position that this case comes within such exceptions.

Petitioner asserts that the question of whether he should be required to answer these burdensome and defamatory interrogatories as a condition of having his day in court to recover compensation for damages suffered is sufficiently separable, independent, and important in its own right to warrant review at this time. We believe the language of this court in an earlier case is applicable wherein it was stated "This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Industrial Loan Corporation*, 337 U. S. 541, 546.

In addition, this issue is clearly "fundamental to the further conduct of the case." *United States v. General Motors Corporation*, 323 U. S. 373, 377. See also *Land v. Dollar*, 330 U. S. 731, 734; *Larson v. Domestic & Foreign Commerce Corporation*, 337 U. S. 682, and *Myers v. Bethlehem Corporation*, 303 U. S. 41.

Further petitioner contends that the decision of the Iowa Supreme Court is so arbitrary and non-judicial that petitioner is thus denied procedural due process. Petitioner's case received no consideration. Not a case cited in petitioner's brief and argument was referred to. Not a brief point or question for review was considered. The casual reference to petitioner's amended and substituted petition was an avoidance and not a consideration on the merits.

Therefore, if the decision of the Iowa Supreme Court is to become established practice we shall have a government of men and not of laws.

While the Iowa Supreme Court based its ruling in Division I and upheld the decision of the Trial Court on the ground of lack of specific objections, the court added under Division II that petitioner should have appealed from the original ruling of the Trial Court of November 22, 1954. This suggestion again ignores almost completely the record. The court gives no consideration and makes no mention of the filing of petitioner's Affidavit, Appendix 4, which should have been considered in connection with petitioner's amended and substituted petition. The Iowa Supreme Court makes no mention of the nature of the Amended and Substituted Petition, its contents, and its far-reaching effect. It disposes of the question casually by saying that the trial court in its order of December 6 in permitting the filing of this amended and substituted petition found that "Plaintiff's claim was not substantially changed." This statement of the Trial Court was used in an entirely different connection and in an entirely different sense. The amended and substituted petition was germane to the cause of action as stated in the original petition. The Trial Court in its order of December 6 had no intention of making a pre-trial finding as to its later ruling after the filing and argument on petitioner's Motion for reconsideration of the court's Ruling of November 22, 1954.

The time referred to in the broadcast was before the passage of the Smith Act. The broadcast as alleged in the amended and substituted petition charges petitioner with a betrayal of his farm organization and of the farmers of Iowa and of the nation. The amended and substituted petition charges criminal libel. The broadcast, as shown in the amended and substituted petition, charges that petitioner was a secret member of the Communist Party who worked underground and conspired with agents . . . sent out from Russia to overthrow the American system of agriculture and bring about the Russian system of agriculture. The broadcast thus charges criminal conspiracy and subversion.

The amended and substituted petition and the Affidavit of petitioner filed in connection therewith go to the charges contained in the broadcast and thus the very heart of the

controversy. They determine the issues in the case now, and will determine the issues in the future when the case is before the court and jury. This being true, an appeal could be had only from the Ruling of the Trial Court of January 13, 1955, denying plaintiff's Motion to reconsider.

This was the position taken by the Chief Justice and the two Associate Justices of the Iowa Supreme Court when an order was entered on January 22, 1955, that "After consideration by the three Judges named it was determined that leave to appeal from an interlocutory order should be granted and it is hereby granted to the extent that the plaintiff is permitted to appeal from the ruling and order of the District Court of Polk County, Iowa, dated January 13, 1955, wherein said court overruled plaintiff's motion to reconsider the court's ruling filed November 22, 1954, requiring plaintiff to answer certain interrogatories noted in said ruling." R. p. 168, lines 21-32.

That brings us again to the merits of the controversy, to the basic and far-reaching effect of the questions involved in this case, the question of due process of law and freedom of speech and of the press as guaranteed under the 14th Amendment to the Federal Constitution, the question of procedural due process of law as guaranteed under the 14th Amendment and the integrity and the principles of the common law and of our judicial system.

The Iowa Supreme Court's Opinion is based on an assumed state of facts without any evidence in the record to support it. The opinion is in direct conflict with Iowa procedure and the established principles of Iowa law. If allowed to stand the plaintiff-petitioner must submit his case to a court and jury in Polk County, Iowa, not under the law of the land—due process of law, but at a trial where he is denied his fundamental rights, at a trial where a broadcasting company with national and international coverage will have the right in cross examination to seek to justify and to mitigate the libel charged in plaintiff's Amended and Substituted Petition by new and additional libels, by questions and cross examination not relevant, not competent, but intrinsically prejudicial, poisonous and libelous *per se*,

questions which in their very nature imply and impute guilt, questons which seek to impute guilt by accusation, by acquaintance, by association, by inquiry and denial, and by parallel thinking. Petitioner is commanded under these interrogatories to describe specifically all of his objections, if he has any, to our Capitalistic system of private enterprise. He is commanded to list all the speeches he has made on political subjects and matters involving our foreign relations and to list all the articles he has written on international subjects without even a time limit.

He is called upon to state all aims or principles of Communism he has advocated, and to state whether he now or in the past has advocated any of the social or political views of Marx, Engels, Lenin or Stalin, or the advocacies represented by the policy pronouncements of the government of the Soviet Union; and he is called upon to state whether he spoke, wrote, or contributed funds or took any other action on behalf of the Communists or Viet-Minh forces, during the hostilities in Indo-China.

These interrogatories show on their face they are intrinsically bad and impossible to comply with. That is particularly true of interrogatories No. 7, 18, 26, 27, 28, 30, 32, 33, 34, 35, and 45. Record, p. 15-25, Appendix V. They are vague and indefinite, and call for information concerning which there can be no common agreement as to meaning between men of intellect. They therefore subject the petitioner to the liability of prosecution for perjury for the same reason as shown in the case of *United States v. Owen Lattimore*, 127 Fed. Supp. 405.

If the decision of the Iowa Supreme Court affirming the decision of the trial court is to stand petitioner will be denied a trial before court and jury under the law of the land —due process of law. A miscarriage of justice will follow for the reason as shown in the case of *State of Iowa v. William Sentner*, 230 Iowa 590 at 604-614; 288 N. W. 813-818 and also for the reasons shown in the case of *United States v. Owen Lattimore, supra.*

Interrogatory Number 16, which was eliminated by the trial court contained such highly improper questions as

these: petitioner was called upon to state whether he now or had belonged to the Ku Klux Klan, the Black Dragon Society, the Knights of the White Camelia, or the Italian Black Shirts.

Yet these interrogatories which, by their very nature, carry their own condemnation, the Supreme Court of Iowa said in its opinion the trial court was not called upon to consider. That was the ground on which the Supreme Court of Iowa affirmed the decision of the trial court and thus avoided passing upon the Federal questions, and all other questions and propositions urged by petitioner.

If a broadcasting company assumes the right to act as the people's guardian and to present a dramatized program to drive the "Last Man Out", the last man in this case being your petitioner, the broadcasting company should have better evidence, or additional evidence to that of an informer who must needs go back over 20 years to have a story to tell.

This is true if we are to remain a free people and be protected in our right to follow our chosen occupation or business and retain the confidence of the people.

The broadcasting company may justify only by producing competent evidence to support the charge and the precise charge as made by Helen Wood Birnie in the broadcast. This is well-established law in Iowa. See *Morse v. Times-Rep. Ptg. Co.*, 124 Iowa 707 IV-7 at p. 720, 100 N. W. 867 pt. 4 at 872. *Wallace v. Homestead Company*, 117 Iowa, 348 III at 361, 90 N. W. 3 at 838-839. *Salinger v. Coles*, 195 Iowa 873 at 876, 191 N. W. 167 at 168-169.

None of the interrogatories is relevant. They do not seek information to support the issues as made as a result of the broadcast, the plaintiff's amended and substituted petition, and the answer of respondent pleading the truth of the statements of Helen Wood Birnie. R. p. 9, lines 15, 17; R. p. 61-82.

It follows from all this that to compel petitioner to answer these interrogatories denies to petitioner freedom of speech and of the press; deprives him of his property without due process of law and denies him equal protection of the law, all as guaranteed to him under the 14th Amendment of the Federal Constitution.

CONCLUSION

Our Courts are our last line of defense. To the extent our courts fail us our liberties are denied. If a broadcasting company may carry over its station a program, the sole purpose of which is to brand an individual, a farm leader, as a betrayer of his people and his country—a secret member of the Communist party conspiring with agents sent out from Russia to destroy our way of life, and if that broadcasting company, when called to account, may justify, not by proving the truth of the libel as charged, but by numerous additional defamations remote in time, place, and condition, then justice ceases to be justice and becomes a travesty and a delusion.

Our very survival as a free people depends upon the preservation of our Constitutional right of free speech and a free press and the preservation and integrity of our common law and our judicial system. We therefore ask that a writ of Certiorari be granted so that a full hearing may be had and that we may have "Equal Justice for All."

Respectfully submitted,

GEORGE COSSON,

CLARENCE COSSON,

Attorneys for Petitioner.

APPEARANCE

I, George Cosson, a member of the bar of the Supreme Court of the United States, do hereby enter my appearance for Fred Stover, Petitioner.

.....

GEORGE COSSON,
1014 Savings & Loan Building,
Des Moines 9, Iowa.

PROOF OF SERVICE

I, ..., a member of the Bar of the Supreme Court of the United States, and attorney for Central Broadcasting Company, Respondent, hereby accept service and acknowledge receipt of two copies of the foregoing petition to the United States Supreme Court for a writ of Certiorari to the Supreme Court of Iowa this ..... day of January, 1957.

.....

Attorney for Respondent.

APPENDIX I

From the Clerk's Office, Supreme Court of Iowa
Des Moines

Affirmed and opinion filed July 26, 1956.

49009

FRED STOVER, APPELLANT,
VS.
CENTRAL BROADCASTING COMPANY, APPELLEE.

Appeal from the Polk District Court.

By permission of this court, the plaintiff appeals from an order before final judgment. The order appealed from denied plaintiff's motion to reconsider a previous order directing him to answer fifty-one interrogatories filed by the defendant. Affirmed.

THOMPSON, C. J.

On March 13, 1954, the plaintiff filed his petition asking judgment for damages allegedly sustained because the defendant broadcast a radio program in which the plaintiff was falsely and maliciously named a Communist and member of the Communist party. The plaintiff was at the time the president of the Farmers Educational and Cooperative Union of America, commonly known as the Farmers Union. The defendant was the owner and operator of Radio Stations WHO and WHO-FM, and the petition alleged that on February 21, 1954, it broadcast a program entitled "Last Man Out" in which the alleged defamatory statements were made.

On August 31, 1954, the defendant filed its answer, and in connection therewith on the same date it filed an application for permission to file in excess of thirty interrogatories, under RCP 122. At the same time it filed fifty-seven numbered interrogatories. On September 30, 1954, the plaintiff filed its "Resistance to Application for Permission to File in Excess of Thirty Interrogatories". Since we think this resistance is of governing importance in the present appeal, we set it out in full herewith:

"Comes now the plaintiff and resists the defendant's Application for Permission to File in Excess of Thirty Interrogatories and as grounds therefore (sic) states: I. That the plaintiff denies 'that the scope of the relevant matters concerning which this defendant seeks information in this case is so broad that the matters to be inquired about cannot be confined to thirty interrogatories.' and further denies 'That each of the attached interrogatories relates to material issues in this case and the answers to the same rest peculiarly within the knowledge of the plaintiff and the defendant has no adequate source of information regarding the same.' and as a further reason for his said resistance the plaintiff denies that it would be in the interest of justice to require the plaintiff to divulge the information requested in said interrogatories and states that it is not necessary that many of the interrogatories requested be answered in order to permit the defendant to adequately prepare for trial;

"II. That as an additional reason for his said resistance the plaintiff states that many of the interrogatories are not material to the issues in this case and in fact are not interrogatories or questions but are demands for a vast fund of information much of which is not or could not be relevant or material in this case and many of which are not properly necessary for the defendant to have in order to prepare for trial, and for the additional reason that the proper interrogatories proposed in the defendant's said Application, are less in number than thirty (30);

"III. That many of defendant's purported questions are improper, incompetent and immaterial and if answered would not tend to prove or disprove any of the issues in this case and such purported questions show on their faces, and because of the multiplicity and magnitude thereof, that they are filed for the purpose of creating suspicion, prejudice and confusion relative to the actual and real issues involved in this case and not for the purpose of permitting the defendant to adequately prepare for trial."

It is important to note that no objections were filed to the interrogatories themselves, except as such as were con-

tained in the resistance above set forth. On October 16, 1954, with amendment on October 21, 1954, the plaintiff filed his motion for leave to file an amended and substituted petition, with copy of the proposed petition attached. After several hearings, the trial court ordered that the defendant might file fifty-seven interrogatories, as requested; and that fifty-one of them were proper and should be answered. Qualifications were attached to the required answers to some of those which it was held should be answered. This order was entered on November 22, 1954.

On December 3, 1954, the defendant filed its resistance to plaintiff's motion for leave to file an amended and substituted petition. On December 6 following the court entered its order permitting the filing of the amended and substituted petition; but significantly included this language in the order:

"The Court is of the opinion that the proposed amended and substituted petition does not substantially change plaintiff's claim and that in the furtherance of justice the amendment sought should be permitted. Therefore the motion is sustained. * * *

"On November 22, 1954, this Court filed a ruling on application for permission to file in excess of thirty interrogatories. In presenting the motion for permission to amend herein ruled on, counsel made no request for any modification of the ruling dated November 22, 1954, and no modification of said ruling is intended or made in the present ruling."

On December 16, 1954, the plaintiff filed his "Motion to Reconsider the Court's Ruling Requiring Plaintiff to Answer 57 Interrogatories". This motion was denied by the court on January 13, 1955, and on January 17 following the plaintiff filed in this court his application for leave to appeal from the order denying his motion to reconsider. We granted leave to appeal in these terms:

"After consideration * * * it was determined that leave to appeal from an interlocutory order should be granted and it is hereby granted to the extent that the plaintiff is permitted to appeal from the ruling and order of the Dis-

trict Court of Polk County, Iowa, dated January 13, 1955 wherein said court overruled the plaintiff's motion to reconsider the court's ruling filed November 22, 1954, requiring plaintiff to answer certain interrogatories noted in said ruling."

I. We have set out above the resistance of the plaintiff to the application for leave to file more than thirty interrogatories, and have said that no other objections were filed. A cursory inspection of the resistance shows that no specific objections were lodged against any specific interrogatories. Paragraph I of the resistance concludes with the statement "it is not necessary that many of the interrogatories be answered in order to permit the defendant to prepare adequately for trial." Paragraph II alleges "that many of the interrogatories are not material to the issues in this case, etc." Paragraph III says that "many of defendant's purported questions are improper, incompetent and immaterial, etc." Rule 123 provides for filing objections to proposed interrogatories within seven days. While the specific question has not been passed upon by this court, it seems clear that the objections must be sufficiently specific to point out to the court the claimed reason why each interrogatory need not be answered. Omnibus objections such as the ones contained in the resistance above set out serve no purpose and should not be considered. They say only that "many" of the interrogatories are improper for stated reasons; but which ones are vulnerable to these complaints is nowhere pointed out. The court is left to speculate as to which interrogatories are thought by the plaintiff to be not necessary to enable the defendant to prepare adequately for trial, which ones not material, which ones improper or incompetent.

While our rules governing interrogatories vary in several respects from the federal rules, we think there is no difference in principle on the matter of filing specific objections. There is the same good reason for requiring that objections must be definite and point out to the court with certainty the weakness or vice in the interrogatory attacked here as in the federal practice. General objections have

often been held insufficient in the federal courts and under the Federal Rules Decisions. Thus in *Bowles v. Safeway States*, 4 F.R.D. 469, it is said:

"General objections to interrogatories are not proper. *Boysell Co. v. Hale*. 30 F. Supp. 255; Cyclopedia of Federal Procedure, 2nd Ed., Vol. 6, Sections 2762, 2986. The reason therefore is that the court is not required to sift each interrogatory to determine the usefulness of the answer sought. The burden is upon the objector to show that the answer is privileged, not relevant or in some other way, is not the proper subject of an interrogatory. *Blanc v. Smith, D. C.*, 3 F.R.D. 182."

In *Hoffman v. Wilson Line*, 7 F.R.D. 73 it was held: "Since the defendant has not lodged specific objections to Interrogatories Nos. 27, 31, 33, 34, 35, 36, 37, 38, 51 and 52 they must be answered." The federal courts have repeatedly held that an objection which is so general that it would require the court to particularly examine each question propounded to determine if the objection applies, is not good. It is true that in the instant case the court did not place its ruling directing that certain of the proposed interrogatories be answered upon the ground suggested above. It took the difficult and laborious method of analyzing each interrogatory to determine if any objection applied. The plaintiff has received the benefit of the court's grace in this respect through the elimination of some six of the questions propounded; and from this the defendant has not appealed.

But we are committed to the rule that we must affirm the trial court if any sufficient basis appears in the record therefor, even though the ruling was placed upon a different ground. *In re Will of Smith*, 245 Iowa 38, 46, 60 N.W. 2d 866, 871; *Folsom v. Grove*, 233 Iowa 1140, 1142, 11 N.W. 2d 368; *In re Will of Crissick*, 174 Iowa 397, 416, 156 N.W. 415, 422; *In re Will of Jahn*, 184 Iowa 416, 421, 422, 165 N.W. 1021, 1023. The burden is upon the appellant to demonstrate error; and this he has not done if the record shows proper support for the ruling complained of. We are clear that the rule applies here. The trial court could well have

placed its ruling upon the ground of lack of specific objections, and we uphold it on that ground.

II. Appellee also urges that a motion to reconsider a previous ruling or order (except for motions granting or denying new trials under RCP 331) raises no question of law and demonstrates no error. The error, if any, was in the previous ruling, and the appeal should have been taken from it. There is merit in this contention. The rule is stated in *Fairbanks v. Beard*, 247 Mass. 8, 9, 141 N.E. 590, 591: "The disposition of a motion to vacate judgment rests in the sound discretion of the court. The mere refusal to grant it raises no question of law." In the case at bar, while plaintiff contends that the filing of his amended and substituted petition called for a different ruling on the interrogatories, we have pointed out that the court in its ruling permitting the filing of this petition specifically found plaintiff's claim was not substantially changed, and "no modification of said ruling (concerning interrogatories) is intended or made in the present ruling." The court clearly held in its order of December 6 that the order directing the answering of interrogatories made on November 22 was not changed, but was still in full force and effect, notwithstanding the amended and substituted petition. It is immaterial whether we consider plaintiff's motion to reconsider as applying to the original order to answer interrogatories made on November 22 or the order of December 6.

Since we have held in Division I that the case must be affirmed, we shall not discuss at length the contention that a refusal of a motion to reconsider or vacate or set aside a previous ruling raises no appealable question and generally by its nature cannot be made the basis of an appeal. But see *Townsend v. Wisner*, 62 Iowa 672, 673, 18 N.W. 304; *Bane v. Becker*, Iowa, 8 N.W. 2d 421; 4 C.J.S., Appeal and Error, section 132 a, pages 265, 266; 2 Am. Jur., Appeal and Error, section 102; *Bennett v. Johnson*, 230 Minn. 404, 42 N.W. 2d 44; *Barrett v. Smith*, 183 Minn. 432, 237 N.W. 15; *Nuckolls v. Bank of California*, 10 Cal. 2d 266, 270, 74 P. 2d 264, 267, 114 A.L.R. 708; *Bass v. Baltimore & Ohio Terminal Railroad Company*, 142 F. 2d 779, certiorari denied 323

U.S. 775, 65 S. Ct. 135, 89 L. Ed. 619; *Pfister v. Northern Illinois Finance Corp.*, 317 U.S. 144, 87 L. Ed. 146, 63 S. Ct. 133; *Marty v. Nordby*, 201 Minn. 469, 276 N.W. 739, 740; *Wylie v. Coxe*, 55 U.S. 1, 2, 14 Howard 1, 14 L. Ed. 301 ("In relation to the order, it is plain that no appeal will lie from the refusal of a motion to open the decree and grant a rehearing. The decision of such a motion rests in the sound discretion of the court below, and no appeal will lie from it"); *Pink v. Deering*, 129 N.J.L. 552, 30 A. 2d 508, 509 ("If the writ of restitution was appealable * * * it was appellant's duty to perfact her appeal within the statutory time limitation, and this she did not do; and she may not, after the period of appeal has elapsed, start a new period running by the device of asking the court to alter the allegedly faulty writ and then reading error into the refusal of the court to grant that request."). *Hudson Bus Transportation Co. v. Board of Commissioners*, 131 N.J.L. 576, 37 A. 2d 636, 638 ("An appeal to the reviewing jurisdiction of a higher court should be directed at the decision in which the error is said to lie and not at the refusal of the trial tribunal to reconsider, or upon reconsidering to change, that decision"); *Worrlein v. Maier*, 177 Minn. 474, 225 N.W. 399, 400.

While our decision herein rests upon the ground set out in Division I, we have thought it advisable to call attention to the law governing attempted appeals from rulings denying motions to set aside or vacate or reconsider previous rulings. Generally such an appeal raises no legal question and no error may be predicated upon it.

III. The appellant has moved that certain costs be taxed to the appellee, regardless of the outcome of the appeal. The appellant proceeded under R.C.P. 340 (b), by including in the proposed abstract of the record a statement of the points upon which he would rely upon appeal. The appellee objected to the record as proposed, and procured a transcript which was filed, and an order from the trial court settling the record which required the addition of considerable printing. We think there is merit in appellant's objections at this point. No substantial need for the transcript appears, and much of the material in the

record we find unnecessary. The cost of the transcript will not be taxed against appellant at this time, but will await further developments in the case. One-third of the cost of printing the abstract of the record will be taxed to appellee. Affirmed.

All Justices concur.

APPENDIX II

IN THE SUPREME COURT OF IOWA
OFFICE OF THE CLERK

October 18, 1956

FRED STOVER, *Appellant,*
vs.
CENTRAL BROADCASTING COMPANY

Petition for Rehearing
DENIED

Helen M. Lyman, Clerk

APPENDIX III

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1956

FRED STOVER, *Petitioner,*
vs.
CENTRAL BROADCASTING COMPANY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner, IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including 1st February, 1957.

/s/ TOM CLARK,
Associate Justice of the Supreme Court of the United States.

Dated this 10th day of January, 1957.

APPENDIX IV

AFFIDAVIT

On the 11th day of December, 1954, Plaintiff-Petitioner filed in the office of the Clerk of the District Court of Polk County, Iowa, his AFFIDAVIT as part of the record in his motion to reconsider the ruling of the Trial Court of November 22, 1954, as follows:

STATE OF IOWA)
) SS.
COUNTY OF POLK)

I, FRED STOVER, being first duly sworn, upon oath depose and state that I am the plaintiff in the above-entitled cause of action; and that at the time of the matters referred to in the broadcast furnishing the basis for this suit, as set forth in plaintiff's amended and substituted petition, I was not, as alleged by one Helen Wood Birnie, a member of the Communist Party, either secret or otherwise; that I did not attend a meeting of "The Steering Committee," as claimed by said Birnie, at which time the merger of the Farm Holiday Association and the Iowa Farmers Union was allegedly discussed, or at any other time; that I never met, never knew, and never heard of Helen Wood Birnie until the time of the broadcast complained of in plaintiff's petition, that I never knew and never heard of Hal Ware until he was referred to in a speech made by Senator Styles Bridges in the United States Senate in September, 1950.

I further state that during all the times of the matters and things mentioned in said broadcast—except at the very close wherein I was identified—I was not a member of and had no connection with the Iowa Farmers Union or the National Farmers Union. That I never at any time had any connection with the Farm Holiday Association. That during said time I was connected with the Iowa Farm Bureau, and served as President of the Cerro Gordo County Farm Bureau. I was also a member of the Research and Steering Committee of the Iowa Farm Bureau.

That I am fifty-six (56) years of age; that I am the owner and operator of a 240-acre farm in Cerro Gordo County, free of encumbrance; that I have a wife, two daughters, and three sons; that two of my sons enlisted and served in the United States Navy; that my youngest son is now nineteen years of age and is studying for the ministry; that upon my death, I want my farm to go to my wife, and at her death, to our children.

I believe that in this age of atom and hydrogen bombs and guided missils, peaceful coexistence is not only desirable, but imperative if peoples and free institutions are to survive. I believe in adequate defense of our country.

I believe in our Declaration of Independence, our Constitution and our Bill of Rights.

/s/ FRED STOVER,
Affiant-Plaintiff.

SUBSCRIBED and SWORN TO before me by the said FRED STOVER, on this 22d day of October, 1954.

/s/ HERBERT H. HAUGE,
Notary Public.

R. p. 126, ll. 20-34; p. 127, 128.

APPENDIX V

Partial list of interrogatories as shown by the Record, pages 15-25.

Interrogatories

7. Designate and describe specifically all copies of speeches which have been given by the plaintiff on political subjects including all of those wherein the plaintiff commented on the Smith Act, American and United Nations participation in the Korean War, the war in Indo-China, recognition of Red China, Russia and the Communist Party, other organizations of Communists, or Communist "front" organizations.

18. Name all Communist "front" organizations whose meetings plaintiff has ever attended and the time and place

of such meetings, and the nature and extent of plaintiff's participation therein.

26. State all occasions prior to February 21, 1954, on which the plaintiff has been called or referred to as a "Red," a Communist sympathizer or follower of the Communist line, and the names of the speakers or writers who made such statement, and the occasions on which such statements were made.

27. State the occasions and persons to whom the plaintiff, prior to February 21, 1954, has denied charges that he was a Communist, "Red," Communist sympathizer or follower of the Communist line.

28. List the titles of all articles which the plaintiff has written for publication and the dates of publication and the name of the publication in which the same appeared, on the subject of Communism, international affairs, American and United Nations participation in Korea, the Stockholm Peace Proposal.

30. Did the plaintiff speak, write, contribute funds or take any other action on behalf of the North Koreans in their recent hostilities with the South Koreans or any such action favorable to them and, if so, state the occasion, date and place of such efforts, the precise nature of the same and the words or language employed.

32. Did the plaintiff speak, write, contribute funds or take any other action on behalf of the Communist or VIET-MINH forces in their recent hostilities in Indo-China or any such action favorable to them and, if so, state the occasion, date and place of such efforts, the precise nature of the same and the words or language employed.

33. State whether or not you oppose the capitalistic system in any respects and, if so, detail all your objections to the capitalistic system of private enterprise.

34. State whether or not you now or in the past have advocated any aims or principles of Communism, and if so, detail the same and your actions in such respect.

35. State whether or not you now or in the past have advocated any of the social or political views of Marx, Engels, Lenin or Stalin, or the advocacies represented by the

policy pronouncements of the Government of the Soviet Union and, if so, detail the same and your actions in such respects.

45. State whether or not you are personally acquainted with any individuals who are now or have been exponents of the Communist cause or leaders of the Communist movement within the United States and, if so, state the names and addresses of such persons and render a full detailed account of your political associations and activities with each.

Supreme Court, U.S.
FILED
FEB 11 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 716

FRED STOVER,
Petitioner,

vs.

CENTRAL BROADCASTING COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.....

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

A STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS SOUGHT TO BE INVOKED.

Petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C. Section 1257 (3).

Respondent respectfully submits that upon the record there is no federal question presented for review by the Supreme Court of the United States. No federal question was decided by the Supreme Court of Iowa and its decision rested exclusively upon state law.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner contends that the Fourteenth Amendment to the Constitution of the United States is involved.

Respondent respectfully submits that the Supreme Court of Iowa neither passed up the Constitutional provisions in question, nor was a decision based upon said Constitutional provision necessarily implied in the decision of the Supreme Court of Iowa.

QUESTIONS PRESENTED FOR REVIEW

Respondent respectfully submits that no federal question is presented for review by this Court.

This case arose and was decided in the following manner by the Supreme Court of Iowa:

1. March 13, 1954 plaintiff filed his Petition in State Court asking judgment for damages allegedly sustained as a result of a radio broadcast by the defendant in which the plaintiff alleged was falsely named a Communist. (Record pages 5 and 6)

2. August 31, 1954 respondent filed its Answer to the Petition of the plaintiff. (Record page 7)

3. August 31, 1954 defendant made application for permission to file in excess of thirty interrogatories under Rule 122 of the Rules of Civil Procedure of the State of Iowa, and a copy of the proposed interrogatories was attached. (Record page 11 to page 50)

4. September 30, 1954 petitioner filed a Resistance to the Application of respondent for permission to file in excess of thirty interrogatories. (Record page 56 to page 58)

5. November 22, 1954 the trial court permitted the filing of fifty-seven interrogatories and found fifty-one of them to be proper and ordered the respondent to answer the same. (Record page 102 to page 118)

6. December 16, 1954 petitioner filed in the trial court a Motion for reconsideration of the prior ruling which had been entered on November 22, 1954. (Record page 131 to page 137)

7. January 13, 1955 the trial court entered an Order overruling petitioner's Motion to reconsider the Order of November 22, 1954. (Record page 166 to page 168)

8. January 22, 1955 the Supreme Court of Iowa granted leave to petitioner to take an interlocutory appeal to that Court "to the extent that the plaintiff is permitted to appeal from the ruling and order of the District Court of Polk County, Iowa dated January 13, 1955 wherein said Court overruled plaintiff's motion to reconsider the Court's ruling filed November 22, 1954 requiring plaintiff to answer cer-

tain interrogatories noted in said ruling." (Record page 168)

9. January 26, 1955 plaintiff perfected his appeal to the Supreme Court of Iowa. (Record page 169)

10. On July 26, 1956 the Supreme Court of Iowa affirmed the decision of the trial court on two grounds based exclusively upon state law:

A. Plaintiff failed to lodge specific objections in the trial court against the interrogatories in question and therefore could not claim error.

B. No appeal lies to the Supreme Court of Iowa from an order overruling a motion to reconsider a previous ruling. (The opinion of the Supreme Court of Iowa is designated Appendix I in the Petition for Writ of Certiorari and is set out verbatim at pages 16 to 23 of said Petition and is reported in 78 N. W. 2d 1)

ARGUMENT

PROPOSITION

TO INVOKE THE JURISDICTION OF THIS COURT IT IS NOT SUFFICIENT THAT A FEDERAL QUESTION BE RAISED BELOW; IT IS ALSO ESSENTIAL THAT THE FEDERAL QUESTION BE DIRECTLY PASSED UPON BELOW AND THAT THE DECISION HAVE BEEN ADVERSE TO THE PETITIONER. BECAUSE THE SUPREME COURT OF IOWA PASSED UPON NO FEDERAL QUESTION AND BECAUSE THE DECISION OF THE SUPREME COURT OF IOWA WAS BASED EXCLUSIVELY UPON SUBSTANTIAL NON-FEDERAL GROUNDS, THIS COURT IS WITHOUT JURISDICTION.

Authorities

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Revised Rules of Supreme Court of the United States, No. 19.

Chesapeake and Ohio Railway Company v. McDonald, 1909, 214 U. S. 191, 29 Supreme Court 546, 53 L. Ed. 963.

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Mississippi & M. R. Co. v. Rock, 1866, (4 Wall.) 177, 180, 18 L. Ed. 381.

COMMENT

In order to invoke the jurisdiction of this court it is not sufficient that a federal question be raised below; it is also essential that the federal question be directly passed upon below and that the decision have been adverse to the petitioner. The authorities sustaining this position of respondent are numerous and unanimous.

The rules of this Court (No. 19) announce this principle by providing as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> (a) *Where a state court has decided a federal question of substance* not theretofore determined by this

court, or has decided it in a way probably not in accord with applicable decisions of this court." (emphasis added)

In *California Powder Works v. Davis*, 1894, 151 U. S. 389, 14 Supreme Court 350, 38 L. Ed. 206, Mr. Chief Justice Fuller, speaking for the Court stated:

> "It is axiomatic that, in order to give this court jurisdiction on writ of error to the highest court of a State in which a decision in the suit could be had, it must appear affirmatively not only that a Federal question was presented for decision by the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. And where the decision complained of rests on an independent ground, not involving a Federal question and broad enough to maintain the judgment, the writ of error will be dismissed by this court without considering any Federal question that may also have been presented. *Eustis v. Bolles*, 150 U. S. 361. It is equally well settled that where our jurisdiction depends upon the denial by a state court of a title, right, privilege, or immunity claimed under the Constitution, or any treaty or statute of the United States, it must appear on the record that such title, right, privilege, or immunity was specially set up or claimed at the proper time and in the proper way, and that the decision was against the right so set up or claimed. *Schuyler Bank v. Bollong*, 150 U. S. 85, 88."

Applying these well settled principles to the case at bar, it is readily apparent that the Supreme Court of Iowa neither considered nor decided any federal question and its decision was based exclusively upon procedural grounds arising under state law. Under such circumstances, this court has no jurisdiction. No. 19 of the Rules of this Court requires that before a review on writ of certiorari may be had the lower court must have decided a federal question of substance.

Petitioner apparently labors under an impression that the mere fact that he urged a point under the Federal Con-

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his Brief and Argument to the Supreme Court
nfers jurisdiction upon the Supreme Court of the
es to review the decision of the state court. How-
gant waives any federal right by ignoring state
rules which results in a failure to properly raise
question in the state court. Thus, in *Chesapeake*
Railway Company v. McDonald, 1909, 214 U. S.
preme Court 546, 53 L. Ed. 963, this Court said:

> "In *Harding v. Illinois*, 196 U. S. 78, it was held that a Federal constitutional objection might be waived, so far as having the right of review of a judgment in a state court was concerned, where the record in the case disclosed that the question was not made in the state court by proper procedure or argument in support of the assertion of the Federal question, and the state court had for that reason held the right to review the Federal question waived."

Likewise, in *Honeyman v. Hanan*, 1937, 300 U. S. 14, 57 Supreme Court 350, 81 L. Ed. 476; App. dismissed 302 U. S. 375, 58 Supreme Court 273, 82 L. Ed. 312, this court, speaking through Mr. Chief Justice Hughes, stated:

> "Before we may undertake to review a decision of the court of a State it must appear affirmatively from the record, not only that the federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause."

In *Mellon v. O'Neil*, 1927, 275 U. S. 212, 48 Supreme Court 62, 72 L. Ed. 245, this Court said:

> "It has long been settled that this Court acquires no jurisdiction to review the judgment of a state court of last resort on writ of error, unless it affirmatively appears upon the face of the record that a federal question constituting an appropriate ground for such review was presented in and expressly or necessarily decided by such state court."

The following quotation from *Capital National Bank of Lincoln v. First National Bank of Cadiz*, 1899, 172 U. S. 425, 19 Supreme Court 202, 43 L. Ed. 502, applies directly to the case at bar:

> "In our opinion no Federal right was specially set up or claimed in this case at the proper time or in the proper way; nor was any such right in issue and necessarily determined; but the judgment rested on non-federal grounds entirely sufficient to support it."

Reference to and quotation from the abundant decisions of this court affirming the foregoing principles would be superfluous. Each of the cases cited above recognizes and applies the proposition that this court is without jurisdiction to review a decision of a State Supreme Court (1) Where no federal question was decided below, or (2) Although a federal question was decided below, if the decision of the state court rested upon adequate non-federal grounds.

Reduced to its essential parts, this case arose in the following manner:

1. Plaintiff filed a tort action in libel.
2. Defendant, following state procedure, filed a number of interrogatories to be answered by the plaintiff.
3. The trial court overruled objections by the plaintiff to most of the interrogatories.
4. Plaintiff then amended his pleadings in the trial court and filed a motion for a reconsideration by the trial court of its order overruling objections to the interrogatories.
5. The trial court overruled the motion to reconsider.
6. Plaintiff appealed to the Supreme Court of Iowa from the order overruling the motion to reconsider and on the appeal urged, among other things, certain objections to the interrogatories which he claimed impinged on the Constitution of the United States.
7. The Supreme Court of Iowa affirmed the decision below on two grounds based exclusively upon state law:

A. Plaintiff failed to lodge specific objections in the trial court against the interrogatories in question and therefore could not claim error.

B. No appeal lies from an order overruling a motion to reconsider a previous ruling.

The Supreme Court of Iowa rested its decision exclusively upon the foregoing grounds and failed to decide any federal question whatsoever. Under this record, it is obvious that this court is without jurisdiction and that the petition for certiorari should be denied.

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JAMES J. LAMB

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PAUL F. AHLERS

Attorneys for Respondent.

I, ..., a member of the Bar of the Supreme Court of the United States, and attorney for FRED STOVER, petitioner, hereby accept service and acknowledge receipt of two copies of the foregoing Brief, this ..... day of February, 1957.

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Attorney for Petitioner.